IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.280 OF 2002
AND
LETTERS PATENT APPEAL ST.NO.13471 OF 2002
IN
WRIT PETITION NO.4821 OF 2001

Rajendra Bhagwan Gandhi ..Applicant

Versus

Maharashtra State Road Transport Corporation. ..Respondents

Mr.M.S.Topkar for the applicant.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 7.4.2005.

PC

. By the order dated 13.12.2001 the learned single Judge passed the following order :-

> i) The impugned judgment and order of the Industrial Court dated 12th February, 2001 and the order of the Labour Court dated 18th August, 1999 are quashed and set aside.
>
> ii) The reply dated 9th June, 1995 submitted by the Respondent shall be placed before the competent disciplinary authority of the petitioner which shall after taking into account the reply, the report of the enquiry and all relevant material on the record of the disciplinary proceedings as well as the past record of the Respondent arrive at a final decision in the disciplinary proceedings. The final decision shall be arrived at within a period of 12 weeks from today.
>
> iii) In order to facilitate the passing of

a fresh order, as aforesaid, after considering the reply and other relevant material, the order of termination dated 9th June, 1995 is quashed and set aside.

iv) In so far as the question of back wages is concerned, the disciplinary authority shall after concluding the disciplinary proceedings take a final decision on whether the Respondent would be entitled to payment of back wages from the date of the order of dismissal on 9th June, 1995 until the final order is passed by the disciplinary authority. The disciplinary authority shall also arrive at a suitable decision on the manner in which the interim period between the date of dismissal and the date of passing of the final order shall be treated.

v) In the event of an adverse order being passed against the Respondent, the rights and contentions of the Respondent are kept open to be adjudicated in an appropriate forum.

2. Aggrieved thereby the employee has preferred Letters Patent Appeal. The appeal suffers from delay of 55 days and therefore, Civil application has been made by the appellant for condonation of delay.

3. We asked the learned Counsel for the appellant to address us on the legality and correctness of the order dated 13.12.2001 assuming that the Letters Patent Appeal was within time. The learned Counsel for the appellant could not point out any illegality in the impugned order but he submitted that subsequent to the impugned order, the disciplinary authority has passed fresh order of termination

dated 8.2.2002 and in the said order of termination the appellant could not have been denied the backwages since the earlier termination order of 1995 came to be set aside by this Court vide impugned order and the fresh order of termination would be effective only from 8.2.2002.

4. We hardly find any substance in the submission of the learned Counsel for the appellant. Any grievance concerning legality and correctness of the subsequent order dated 8.2.2002 including denial of backwages has to be challenged by the appellant in appropriate proceeding but that cannot be set up as a ground for challenging the legality and correctness of the order dated 13.12.2001 passed by the learned single Judge.

5. We, therefore, find that Letters Patent Appeal has no merits and it is dismissed accordingly. This disposes of Civil application as well.

(R.M.LODHA,J)

(R.S.MOHITE,J)